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AND BEFORE THE

SENATE COMMITTEE ON INTERSTATE COMMERCE APRIL 3, 1894.

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THE LIMITATIONS

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GOVERNMENTAL REGULATIONS OF THE RAILROADS.

WASHINGTON, D. C., *April 3, 1894.*

The committee met at 10:30 o'clock a. m.

Present: Senators Gorman, Brice, Camden, Smith, Cullom, Wilson, Chandler, and Higgins.

STATEMENT OF MR. JOSEPH NIMMO, JR.

Mr. NIMMO. Mr. Chairman and gentlemen: My subject is The Limitations of Governmental Regulation of the Railroads.

In the attempt to prove to you that the interaction of commercial and industrial forces in this country has developed a natural law of railroad transportation, and that this law clearly defines the just limitations of Governmental regulation of the railroads, I shall confine myself as closely as possible to questions which now command the attention of Congress.

It was conceded at the beginning that it is impossible to apply the time-honored rules of the free highway to an avenue of commerce whose pathway is no wider than the wheel of the vehicle which moves upon it. It also became manifest that every consideration of economy, of safety, and of commercial efficiency requires that the entire railroad establishment, including roadway and equipment, must be placed under one central ownership and control. But the country has been reluctant to accept the logic of other truths of even greater significance, which discriminate transportation on railroads from transportation on free highways of commerce. This is especially true in regard to joint traffic.

Many of us can remember when a union railroad depot was a phenomenon. For years railroad managers regarded joint traffic as an entangling alliance, and the courts treated such traffic as in the nature of a partnership between corporations and as such *ultra vires.* In the year 1855 a journey from New York City to a certain town on the Mississippi River in Iowa involved seven transfers from one vehicle of transportation to another, and the payment of seven

railroad, steamboat, and transfer coach fares. That journey can now be made on one through ticket and one through baggage check. Even within the last fifteen years different track gauges have been adopted for the specific purpose of preventing joint traffic, and notably in the case of the Cincinnati Southern Railroad. But to-day passenger, postal, express, and freight cars traverse the railroads of the entire country over the connected tracks of the grandest, the most efficient and, in point of transportation charges, the cheapest system of transportation which the world has ever seen.

The legal, commercial, and economic objections to joint traffic over connecting lines have all been swept aside, and to-day the developed law of the American railroad system prescribes the just limitations of Governmental regulation, and is as mandatory upon American legislators, State and national, as is the commercial clause of the Constitution of the United States. That, Mr. Chairman and gentlemen, is the text of my argument to-day—the obligation of the American legislator to be guided by the clearly developed law of the American railroad system in all Governmental regulation of the railroads; and I assert this general principle with special reference to the legalization of agreements as to the apportionment of competitive traffic.

The tendency toward the unity of the railroads of the United States was greatly stimulated during the late war. Military necessity then demanded that tracks should be connected in order that troops and munitions of war might be rushed through from one point to another over coterminous railroads without change of cars or delays of any sort. The consideration of time was then paramount to every other rule of railroad transportation policy. But when the war was over it was found that an exigent commercial demand had arisen for the continuation and enlargement of such facilities. This led to radical changes in the entire conduct of the interstate railroad transportation of this country. The new order of transportation facilities was finally legalized by an act of Congress, the most important act which has ever been placed upon the statute books of the nation under the constitutional provision that "Congress shall have power to regulate commerce among the States." I refer to the act approved June 15, 1866—only fourteen months after the close of the war. It provided that the railroads of different States may connect their tracks and engage freely in continuous traffic over such connected lines. This act may properly be regarded as the charter of the American railroad system, for it is clearly in the nature of a grant of power. It also expresses an implied contract.

But the American railroad system has a higher charter even than this statutory enactment, and that is the very charter of government itself, the will of the people; for the unification of the railroads of this country is founded upon the public needs and expresses the public sense of what is necessary and proper concerning railroad transportation.

The act of June 15, 1866, was reenforced by the provisions of the act to regulate commerce, commonly known as the interstate-commerce act, in regard to the publicity of rates, due notice of changes in rates, continuous carriage, and the facilities for the interchange of traffic Every one of these provisions had already become the law of custom among railroad companies, in obedience to the compulsion of commercial forces, and not one of them was applicable on free highways of commerce or on disassociated railroads. They were distinctively expressions of the evolved law of a united American railroad system.

But the juncture of the tracks of coterminous lines and the establishment of through traffic over such lines for a long time failed to secure that harmonious conduct of the railroad transportation interests of the country which had been expected. On the other hand the immediate effect of such combinations was to plunge the railroads of this country into new and unforeseen difficulties. For years the companies were staggered by complications of the most appalling character. It was a gigantic and clean-cut case of organic unity vastly outrunning the provisions for administrative control. And, sir, this specific difficulty has defined "the railroad problem" of this country during the last twenty-five years.

THE AMERICAN RAILROAD PROBLEM—ORGANIC UNITY OUTRUNNING ADMINISTRATIVE CONTROL.

There is no other American railroad problem, as I contend, and in that respect I differ radically with Judge Cooley, who thinks the railroad problem is rate-making. I think Judge Cooley is very wide of the mark. It is the difficulty which gives rise to the particular questions which this committee is considering to-day.

For several years the railroad transportation interests of the United States assumed a degree of complexity which transcended the ability of the most intelligent to understand, and baffled the skill of the most adroit to carry into execution any well-devised scheme of administration. Wars of rates prevailed extensively and receipts from traffic were greatly reduced. Many railroad companies were seriously embarrassed, and many others were driven into bankruptcy. For years there was presented the spectacle of competition rampant and no order. Mr. Charles Francis Adams compared the railroads at this period to so many eels in a pot. As I before remarked, it was a case of organic unity without any adequate administrative control.

Mr. Albert Fink thus describes the situation:

> The stockholders, in the first place, surrender their control to a board of directors, the board of directors surrender it to the president, the president surrenders it to a general manager, who in turn surrenders it to the general freight agents of his own and a great number of other roads, who again surrender it to a large number of soliciting agents, and, finally these soliciting agents surrender it to the shippers. The shippers practically make their own rates. The result is confusion and demoralization of traffic, and no end to unjust discriminations between shippers and localities.

In a word, the American railroad system fell into disorder for lack of administrative control.

In the course of time published freight tariffs supplied no information whatever to the public as to the actual rates charged. Discriminations as between shippers under like conditions became the rule, and rate making, in almost all cases, became a mere matter of contrivance as between individual shippers and an army of irresponsible soliciting freight agents. The general freight agents also made special secret contracts with the larger shippers as to the rates which they should pay, and even for months in advance. No shipper knew on one day what rates would prevail on the next, nor had he any idea what his competitors in trade were paying for transportation services. At one time the rates were so much less from Boston to the West than from New York to the West that commerce was turned from the latter to the former city, and shipments in considerable quantities were made from New York to Chicago by the way of Boston.

The commercial and industrial interests of the country suffered from this state of affairs even more than did the railroad companies. Loud complaints arose against railroad management generally. But really nobody was to blame. The whole difficulty was involved in the task of supplying administrative control to a vast and potential organism—the American railroad system. It was a great problem.

Occasionally the general freight agents or other officers having the management of the freight traffic of rival roads would meet together and agree as to the rates which should prevail; but whenever an agreement of this sort was entered into there seemed always to be a mental reservation on the part of each traffic manager that his observance of the agreed rate was conditioned upon the fact that his road was to secure the share of the traffic to which he believed it to be entitled. It turned out, therefore, almost invariably that soon after such agreements were made the soliciting agents of one or more of the competing lines would resort to the cutting of rates in order to make up their share of the traffic in consequence of representations, either true or false, made by shippers, to the effect that offers of cut rates had been made to them by the agents of competing lines.

It seemed for awhile as though the evolution of the American railroad system had proceeded beneficially up to a certain point and then fallen into irretrievable disorder. And yet it was too absurd to assume that the men of this generation had created a vast and potential system of transportation which they lacked the virtue or ability to administer.

At last the stern lessons of a rough experience clearly proved to the more intelligent and fair-minded railroad managers of the country that what was needed was some restraint upon intemperate competition, which would prevent the internal commerce of this country from falling into hopeless disorder without repressing legitimate competition in transportation or in trade.

A careful consideration of all these facts led the brainiest and broadest railroad men in this country to the conclusion that the only recourse lay in the conservative policy of securing to each railroad company, great and small, the right to live; a policy based upon the idea of agreements as to the share of the competitive traffic which should be allotted to each competitor. And when, in the year 1877, the frightful disorder which for several years had prevailed in the conduct of transportation between the West and the seaboard was terminated by the establishment of the plan of dividing traffic under the administration of Mr. Fink, the merchants of New York hailed the expedient with delight and gave it their hearty approval. I believe, sir, that the best-informed merchants of this country are to-day fully convinced that such agreements are necessary and that they constitute wholesome restraints upon a sort of competition which invariably runs to disorder and unjust discrimination.

That, Mr. Chairman, I believe to be the true history of the experiences by which agreements as to the division of competitive traffic came to be regarded as the only practical basis upon which the just and orderly conduct of the railroad transportation interests of the United States can be permanently and beneficially established and the American Railroad System be placed under adequate administrative control.

Wherever such agreements have been made and honestly adhered to unjust discriminations have disappeared, rates have fallen, and commercial order has been restored.

Mr. Chairman, I beg that in this connection you will pardon a brief allusion to my personal experiences in regard to this great subject. On the 1st of July, 1875, as an officer of the Government, I entered upon the study of this great question. At about the same time Mr. Albert Fink began the important work of inaugurating the Southern Railway and Steamship Association. It was the beginning of the federative plan of railroad administration, based upon the expedient of agreements as to the division of competitive traffic. Mr. Fink then consented to serve me as an expert. His report, rendered in the year 1876, embraces 48 pages of this volume [holding the book up], my first annual report on the internal commerce of the United States. I carefully investigated and considered the so-called pooling plan in its relations to commerce for a period of nine years, and challenged it at every step before I gave it my official indorsement, which I did in my report for the year 1884.

Senator CHANDLER. State what your official position was.

Mr. NIMMO. I was chief of the Bureau of Statistics in the Treasury Department. I began as chief of the division of internal commerce, and two years later was made chief of the Bureau of Statistics. As time has advanced I have become more thoroughly convinced that agreements in regard to the division of competitive traffic impose no harmful restraint upon legitimate competition in transportation or in trade, but, on the other hand, are protective of both.

I notified Mr. Fink at the beginning that, for the sake of argument, I should combat him on the theory of pooling at every step. It looked plausible; but as year after year went on, and I guess he began to think I was a very slow man or a very obstinate man. I took nine years to consider it and to see how it would work, for I had made up my mind that I would never indorse it as an officer of the Government until thoroughly convinced of its propriety, not only in theory but by its practical workings.

THE PROPRIETY OF RESTRAINTS UPON COMPETITION.

Popular objections to agreements as to the division of competitive traffic are largely based upon erroneous ideas as to the inviolability of competition. Notwithstanding the faith reposed by the present and by past generations in the efficacy of competition in trade, the doctrine has prevailed for nearly two centuries, as an element of English law, that competition is and ought to be subject to just and wholesome restraints. In the ofttimes cited case of Mitchell *v.* Reynolds, decided about the year 1711, and reported in "Smith's Leading Cases," the policy of the law of England at that time is stated as follows:

> The present doctrine is that while contracts in total restraint of trade are void, yet if the restraints imposed be partial, reasonable, and founded on good consideration, they are valid and will be enforced.

This doctrine has been time and again asserted judicially in this country, and I think it may now be regarded as a fixed principle of American law.

It is with pleasure that I quote upon this important point an expression of the Interstate Commerce Commission, found upon page 39 of their last annual report. In arguing against unduly low rates, which characterize wars of rates, the Commission declare that "it is unrestricted competition that brings rates below what is just and reasonable." And the Commission might well have added that it is unrestricted competition which produces nine-tenths of the unjust discriminations with which they are called to contend. In their first annual report the Commission said: "Excessive and unreasonable competition is a public injury." Presumably that may be regarded as a dictum of Judge Cooley.

Besides, since its organization the Interstate Commerce Commission, under the specific provisions of law, has been earnestly engaged in imposing restraints upon competition. I refer to the provisions of the interstate-commerce act in regard to maintaining agreed rates, the publication of freight tariffs, and ample notice of intended changes in rates. It is now clearly seen that if such restraints upon the freedom of competition were abandoned the American railroad system would again become a rudderless ship afloat upon a stormy sea, without chart or compass. Besides, the internal commerce of the United States would

again be thrown into confusion. So I say that restraints upon competition are sound in American law and in American practice.

But the historical view of this subject seems to be absolutely conclusive. The time came when the alternative confronted the people of this country—the maintenance of order or absolute freedom of competition. Order is not only heaven's first law, but it is a vital condition of all living. Competition, on the other hand, is only a manifestation of living under favoring conditions. And yet much of the reasoning of the present day would place the maintenance of a wild and destructive competition above the maintenance of order. That is a great mistake. When competition becomes so fierce that it degenerates into disorder it passes the acme of its possibilities and becomes the very swoon of existence—the syncope of effort.

But why should any objection be raised, *a priori*, to restraints upon the absolute freedom of competition? Is it not a fundamental condition of our civilization that every forceful element for good shall have the right to assert itself only as it is subject to restraints which experience has proved to be necessary for the maintenance of justice and order? Restraint characterizes our entire commercial, industrial, and social lives. We are all tethered in a thousand ways for our mutual comfort and well being. Our cherished political rights are enjoyed only under legal restraints. We have constitutional limitations and we have liberty only as it is regulated by law.

Mr. Chairman, I now advance to the historic fact that—

AGREEMENTS AS TO THE DIVISION OF COMPETITIVE TRAFFIC HAVE NOT HAD THE EFFECT OF REPRESSING THE WHOLESOME RESULTS OF LEGITIMATE COMPETITION, BUT, ON THE OTHER HAND, HAVE STIMULATED AND PROTECTED LEGITIMATE COMPETITION.

During the early railroad age, when each line was segregated and practically a law unto itself, each commercial town and city had a pretty clearly defined territorial area within which its business operations were carried on, but the evolution of the American railroad system has obliterated all such limitations. To-day the commercial range of each town and city is the whole country, and, to a large extent, the world. A hundred commercial and industrial towns and cities now compete for business within areas in which, formerly, trade was almost entirely confined to the competition of the merchants of some one city. That is entirely due to our unified railroad system. Then there is the fierce competition of industry with industry, of mine with mine, of agricultural area with agricultural area, and, generally, of product with product.

The tendency toward a parity of values produced by such competition is strenuous and all-pervading. This reacts powerfully upon the railroads in reducing and equalizing rates. Thus railroad unity has created a vast competition of commercial and industrial forces, a compe-

tition which is a thousand times as powerful as the destructive competition which agreements as to the division of traffic restrain. Then consider the competition of the Great Lakes and the Erie Canal, of the Mississippi River and its tributaries, and of coastwise commerce on the ocean and Gulf of Mexico as regulators of rail rates. As no railroad can enter into agreements in regard to the division of traffic for which it does not directly compete, it is clear that the competition of commercial and industrial forces is much more pervasive than is the restraint upon railroad transportation imposed by agreements as to the division of traffic.

In all this we see an enormous, far-reaching, and persistent competition which can not possibly be controlled or injuriously affected by agreements for the mere purpose of maintaining order and of preventing unjust discriminations. This is not speculation. It is attested by facts. The average rate for the transportation of freights on the great trunk lines of the country fell from 2·101 cents per ton per mile in 1872 to 0·799 cent in 1892, and the average rate for the transportation of grain on the lakes, Erie Canal, and Hudson River from Chicago to New York fell from 24·47 cents per bushel in 1872 to 5·61 cents per bushel in 1892.

Just here, Mr. Chairman, I want to emphasize the fact that the great railroad organizations of this country are powerless to defeat the wholesome influence of the competition of commercial forces of which I have just spoken. Certain of the managers of the great railroad organizations first formed assumed that by the extension of their lines they could remain a law unto themselves, but in this they were doomed to disappointment. The evolution of the American railroad system was too much for them. These great organizations had nothing to do with building up the American railroad system or evolving the law of its being.

After thousands of miles of road had been absorbed by the Pennsylvania Railroad Company for the purpose of gaining a territorial enlargement which would enable it to defend itself against competitive influences which were deflecting traffic and pulling rates down, it was found that such efforts were absolutely futile. This was clearly explained in the report of the investigating committee ordered by the stockholders of that great corporation for the purpose of ascertaining the cause of the trouble.

Senator HIGGINS. What year was that?

Mr. NIMMO. In 1874. They fell into trouble. Their idea in building up a great organization was that thereby they would be enabled to control a large traffic area, and by the same means be enabled to control rates. That failed in the case of the Pennsylvania Railroad. It has failed in the case of every other great trunk line. After the president and his codirectors had built up this great railroad organization for the purpose of controlling a great traffic area and for the purpose of maintaining rates, the stockholders said to them: "Now, why have

you not done it? Rates are still going down and traffic is going away from us just as before. We have no more control of traffic than the other lines." Then the company appointed three men as an investigating committee—men who had no interest in the Pennsylvania Railroad, either as employés or as stockholders, I will read their conclusion, which has been a sort of text with me for twenty years:

Senator CULLOM. Who were those outside men?

Mr. NIMMO. One was a Mr. Wright. I do not remember the names of the other two.

Senator CULLOM. I did not know but that it was some commission. Can you remember the date?

Mr. NIMMO. I can not. [To Mr. Sewell.] Can you give the exact date when the commission was formed?

Mr. SEWELL. I can not. It was twenty years ago.

Senator CULLOM. It is immaterial.

Mr. NIMMO. In their report submitted in the year 1874 occurs the following significant expression:

> Experience in the past has demonstrated that a railway can not determine the route or destination of traffic originating on its line, and certainly has no controlling influence over trade at competitive points. Elements independent of the way of carriage first determine the destination of freight. After that, questions as to speed, safety, rates, etc., fix the route. With so many competitive points at the West the railway companies recognize their true interests in furnishing every facility to the shipper of freight, and do not attempt by any possible hindrances or unwise charges to defeat his interests, resulting as it would to the injury of the railway companies.

The united railroad system of the United States was too much for them. It had created so many elements of competition that they could not possibly control them, they could not influence them.

The sum and substance of this report was, the commerce of this country is too big and too powerful even for the Pennsylvania Railroad Company to attempt to control it. Yes, sir; the great Pennsylvania Railroad is to-day an integral and dependent portion of the American railroad system, and it is as much the servitor of commerce as is the little railroad company which owns and operates only 50 miles of road.

The recently published speech of Mr. Depew, president of the New York Central and Hudson River Railroad Company, is at once a note of warning and a confession of the supremacy of the law of the American railroad system in regard to the division of competitive traffic.

Mr. Chairman, one thing remains in order to prove to you that the developed law of the American railroad system is as mandatory upon the American legislator as is the commercial clause of the Constitution of the United States, and that is to invite your attention to the fact that the American railroad system has acquired a forceful and clearly defined administrative character, which voices the law of its being, and has brought order out of that chaos which I have described.

RAILROAD FEDERATION.

Although the American railroad system has no corporate existence, no president, no board of directors, or general manager, it presents to the world a forceful, highly organized, and efficient administrative character in the associations of various sorts which constitute the practical federation of the railroads of the United States. The Official Railroad Guide mentions the names of 87 such organizations. Some of these associations attend to the general administration of the joint and competitive traffic interests of railroads. Others have special functions, as, for example, the weighing of cars and their freights, the inspection of cars, the management of freight traffic, the administration of particular branches of the passenger traffic of the country, the determination of joint rates and fares, and the apportionment thereof.

There are also car-service associations, mail-exchange associations, ticket-agents' associations, superintendents' associations, baggage-agents' associations, car-builders' associations, car-accountants' associations, associations in regard to the adoption and use of new inventions, etc. Then there is the American Railroad Association, which includes in its membership all the principal railroad companies of the country. The object of this association is the development and solution of problems connected with railroad management in the United States. It is a deliberative body, without any executive authority whatever, and endowed only with the function of recommending the adoption of its conclusions. But its influence and power for good have been very great and all its work has tended toward a more thorough and beneficent organization of the American railroad system.

The various associations charged with the care of cars in the joint car service of this country constitute a striking and beneficent feature of the administrative character of the American railroad system. Place a man to-day in the car yard of some great center of traffic and he will have an object lesson which will tell him a wondrous story about the American Railroad System. There he will see cars belonging to railroads of the Pacific coast, of the Southern States, Middle States, Northwestern States, and New England States.

Senator CULLOM. And Canada?

Mr. NIMMO. And Canada. It would be impossible for him to tell from the names of the cars, upon the grounds of what company, or even in what State or section of the Union or in what country he was standing. Car service associations were instituted six months after the Interstate Commerce Commission was organized, and they have ever since been a law unto themselves, involving no necessary interposition of Governmental regulation.

They constitute one of the most admirable features of the American Railroad System. I think no case involving the rules of these associations ever went into a Federal court. I think the Interstate Commerce

Commission has had no case in regard to the interchange of cars. The rules established by the associations in every case, I believe, have been affirmed by the State courts. So car-service associations are virtually a law unto themselves. In their practical workings they constitute the most nearly perfect feature of the American Railroad System.

The great traffic associations are the most important of these federative arrangements. In an especial manner they constitute the unity and self-government of the American Railroad System and secure its highest efficiency. The principal of these are the Trunk Line Association, the Central Traffic Association, the Western Freight Associations, and the Southern Railway and Steamship Associations. Then there are auxiliary associations, and associations or committees of associations. These associations and committees are practical business organizations. Their object is to regulate the traffic interests of the railroads within their respective territorial limits. They also determine rates and fares between points in the territories of the different traffic associations.

They constitute a sort of federative government having jurisdiction with respect to the equitable distribution of traffic through means not interdicted by the act to regulate commerce, the establishment and maintenance of the rates which shall be charged for the carriage of goods of the various classes, the discovery and prevention of false billing of freight, false classification, and other devices for cutting rates and producing unjust discriminations, also the rendering of such reports either to each other or to a joint agent, as may be necessary in order that the managers of each railroad may know what amount of traffic competing railroads are carrying. These associations and committees determine the division or prorating of rates in the case of joint traffic and the establishment and maintenance of a uniform classification of rates. Agreements as to the division of competitive traffic constitute a vitally important feature of railroad federation. Traffic associations and committees also attend to a great variety of other matters touching the detail of those intimate relationships arising out of the fact that each railroad constitutes an integral part of one closely connected national railroad system—a system which in the absence of self-government would relapse into the wildest disorder and the most outrageous and destructive discriminations.

These federative arrangements are constantly subject to changes in obedience to the ever changing commercial conditions of the country. Besides, new associations are from time to time formed in order to meet the ever occurring exigencies of a vast railroad system.

Mr. Chairman, I am convinced that it was exceedingly fortunate for the country that the experiment of national regulation of the railroads was not attempted until, by the interaction of forces, a fair degree of order had been brought out of chaos by the administrative agencies which I have described. Without such association the five gentlemen

who composed that Commission would at the beginning have been very much in the condition of so many babes in the woods; and I state it as a fact that, but for the powerful aid which these associations directly and indirectly bring to just and wholesome regulations, the Interstate Commerce Commission would to-day be powerless for good.

True it is that the great problem of supplying the means of administrative control to the American Railroad System is not yet solved. Perhaps it never will be solved perfectly—for perfect administration in human affairs seems to be an idealism rather than a practical conclusion. And yet it is easy to see how it can be greatly advanced in efficiency. The fifth section of the act to regulate commerce has greatly retarded the beneficent adjustment of the American railroad system, and, as I shall hereinafter attempt to show, it ought to be at once and unconditionally repealed.

And now, Mr. Chairman, in the attempt to prove to you that the developed law of the American Railroad System prescribes the just limitations of Governmental regulation of the railroads, I have presented to you the following facts:

First. The juncture of tracks and the establishment of joint interstate traffic in obedience to the demands of commerce have converted the railroads of this country into one great and highly organized American railroad system, which is to the shipper and the traveler as one instrument of commerce.

Second. The present usages of the American Railroad System constitute a fundamental part of the commercial law of this country, having been wrought out in the fierce struggles of the interaction of forces—the only way in which commercial usages can acquire the authority of law in a free country.

Third. The benefits of competition in transportation can only be enjoyed under restraints necessary for the maintenance of order and the prevention of unjust discriminations.

Fourth. Agreements as to the division of competitive traffic are essential to the maintenance of order, the prevention of unjust discrimination, and the protection of legitimate competition.

Fifth. The benefits arising from the competition of commercial and industrial forces are not curtailed by agreements as to the division of traffic.

Sixth. The American railroad system has a clearly defined and highly organized administrative character, which voices and executes the law of its being in a manner thoroughly protective and beneficial toward the commercial and industrial interests of this great country.

And now, Mr. Chairman, I trust that I have made clear to you the fact that the law of the American Railroad System is the law of experience in this country—the evolved law of commercial necessity—and as such expressive of the popular will. Therefore, recognizing as we all must that "our constitutions and laws are in their last analysis but

the authoritative expressions of the popular will," I maintain that the developed law of the American Railroad System defines the just limitations of governmental regulation, and that it is as mandatory upon the American legislator as is the commercial clause of the Constitution of the United States. In a word governmental regulation is simply a supplemental work, the range and character of which must be determined by environing circumstances and conditions.

The practical applications of the argument thus submitted to you will I trust become more clearly apparent in considering—

THE INTERSTATE COMMERCE COMMISSION AND ITS WORK.

In the exercise of its function of preventing unjust discriminations and exorbitant charges the work of the Interstate Commerce Commission has been crowned with abundant success. Although several hundred complaints as to alleged violations of the act to regulate commerce were made during the year ended December 1, 1893, only 16 cases came to a formal consideration and hearing, all the rest having been settled by the mediatorial offices of the Commission. In only one of the cases decided was the reasonableness of rates called in question, and in that single instance the claim was decided to be not well founded. One of the commissioners has informed me that only about two-thirds of the cases decided sustain the charges preferred. This indicates that the actual number of proven cases of unjust discrimination did not exceed 11, and constitutes a most gratifying proof of the success of this nonjudicial tribunal in the exercise of its appointed function. Mr. Chairman, I venture the assertion that no court in this country inferior to the Supreme Court of the United States has had so few cases appealed from its decision in a single year.

In their last annual report the Commission also declare that the administration of the act to regulate commerce has been instrumental "in enlightening the public mind and reforming the views of railroad managers." They further declare that "the work of regulation is continually progressing in different ways" not only as to the successful performance of the various functions of the Commission, but also as to "the civil and criminal proceedings in the Federal courts, and the determination of suits involving interstate commerce in State courts." This is a most encouraging record. It is creditable to the Commission and besides it fully vindicates the wisdom of those statesmen who framed and carried to a successful conclusion the present means of governmental regulation.

We must not, however, lose sight of the historic fact that all the principal requirements of the act to regulate commerce, by which this beneficial regulation of railroad traffic has been accomplished, are based upon regulations which the companies had for years been attempting to enforce through their own administrative organization. Wholesome railroad regulation has thus been essentially a cooperative work as

between the Interstate Commerce Commission and the railroad companies. Such cooperation relates specifically to the provisions of the act to regulate commerce in regard to the interchange of traffic, due notice of the raising or lowering of rates, the publicity of rates, unjust discriminations and violations of agreed rates. The companies, however, have gone far beyond the requirements of law in regulations of public benefit. I refer especially to common freight classifications, related freight tariffs, and agreements as to the division of competitive traffic, all of which measures have been adopted by the companies from enlightened views of self-interest and the compulsion of commercial forces which constitute at once their environment and the rule of their life.

But, Mr. Chairman, while I see in the work of the Interstate Commerce Commission so much that is cheering in the line of its legitimate function as is defined by law, it is with great regret that I have observed the efforts of that body to have its powers enlarged in directions and through expedients which to me appear to be not only unwise and impolitic, but in certain respects in the face of fundamental principles upon which our governmental institutions are founded. In making so broad an assertion it is, of course, incumbent upon me to state specifically to what I refer. This I shall endeavor to do. And first I would mention the fact that the Commission seek the power of rate-making, at least to the extent of supervising and changing all rate sheets according to their own ideas as to what is just and reasonable. This is clearly stated in their last annual report. Such an attempt at rate-making would in my belief constitute a paternalism of the most objectionable character, and throw upon the Government an intolerable burden.

I can hardly conceive of a graver political error. When the Interstate Commerce Commission shall become invested with the power of rate-making it will be saluted on all sides by demands for the removal of differences in passenger rates and freight rates, however well justified such charges may be by differences of circumstances and conditions. The persistency of such demand will be like unto that of the horse-leech's daughters, which continually cry, "Give, give." Woe to the Government officer who shall attempt to restrain this torrent of appeal for reduced rates. In the end commercial and industrial enterprise will become subject to political rule in the face of all the economies and equities of commerce.

I think the absurdity of such a proposition is clearly apparent from the facts already stated showing that the competition of commercial and industrial forces in this country affords the proper and effectual regulation of rail rates, and absolutely determines the course of the development of the internal commerce of this great country. An attempt to supersede this just and natural limitation of governmental regulation by an artificial governmental rule to my mind would be a

monstrous political error, and I confidently predict that if any such attempt to regulate the commerce of the United States shall actually be made the love of liberty, which is the crowning political passion of the American people, will speedily sweep the Interstate Commerce Commission out of existence with all its undoubted possibilities for good. Why, sir, you can not pass a law to collect the statistics of the internal commerce of the United States for the simple reason that it would tend to clog the wheels of commerce. How absurd, then, the attempt to regulate the course and conditions of that commerce which would be involved in governmental rate-making. When that attempt is made you will sow the wind and reap the whirlwind.

Let us not be unmindful of the fact that a power exercised is a responsibility assumed, and that in this country the *quo warranto* of public scrutiny challenges every proposed exercise of Governmental power. That is vital to the existence of responsible government.

But, Mr. Chairman, the very success of the Interstate Commerce Commission, under conditions involved in the evolution of the American railroad system, abundantly proves the needlessness of any attempt to invest that body with the rate-making function. Just think of it. With its doors wide open for the reception of every complaint, formal and informal, from individuals, boards of trade, chambers of commerce, towns, cities, and aggrieved railroad companies in this great country of 70,000,000 people and about 200,000 miles of railroad, only sixteen complaints reached a formal consideration and hearing during the year 1893, among which complaints there was not a single case of exorbitant charge, and only about eleven involving unjust discriminations sustained. How monstrous then the proposition to impose upon the National Government, through the Interstate Commerce Commission, the task of regulating freight charges in order to reduce these eleven cases to zero.

Confine the Commission to the practical and useful function of preventing unjust discriminations and exorbitant charges, and let well enough alone. After nearly ten years spent in the study of this question as an officer of the Government, I reached the conclusion that the regulation of the railroads must be confined to the prevention of unjust discrimination and unreasonable rates, and that any attempted regulation directed to the administration of the transportation interests of the United States would overwhelm the National Government with responsibility for the success of the commerce of the country, and the course of its development. That would be intolerable.

As I have discussed this subject somewhat at length in an article originally published in the Chicago Tribune, I shall offer you nothing further upon the subject at the present time than to hand to each member of the committee a copy of that article.

THE PROPOSITION TO GIVE TO THE INTERSTATE COMMERCE COMMISSION THE POWER TO RAISE RATES.

There is a specific recommendation in the last annual report of the Interstate Commerce Commission, which I can not fail to notice in this connection. It is the recommendation of that body in favor of endowing it with the power to raise unduly low rates. Mr. Chairman, I must confess that this is an expression of paternalism which surprised me not a little. I can conceive of nothing which would give rise to more widespread or clamorous opposition than an attempt by the National Government to exercise such a power. Sir, if I were authorized to speak for the Government in regard to this matter, and all the railroad corporations of this country by their presidents and attorneys should appear before me and plead in favor of granting to the Interstate Commerce Commission the power to raise rates assumed to be too low, I would say to those railroad officials: "Gentlemen, I will endow you with ample power to establish any and every wholesome restraint upon disorder and unjust discrimination, and will fully legalize all such restraints; and then, fully equipped with the powers of self-government, you can sink or swim, live or die, survive or perish."

THROUGH ROUTES AND THROUGH RATES.

One of the remarkable requests of the Interstate Commerce Commission for enlarged powers is that they may be authorized to compel railroad companies to form through routes and to regulate through rates. I have already shown that the formation of through lines and the establishment of joint traffic over the lines of connecting railroads is one of the most striking characteristics of the American railroad system, and one of the incidents of an evolution beyond all human prescience or control; an evolution now in progress, full of promise for the amelioration of existing evils, and of possibilities for the advancement of the commercial and industrial interests of this country. Mr. Chairman, I think it would be the height of unwisdom for the National Government to attempt to meddle with this beneficent process. Such interference would be likely to work more harm than good. It is a perfectly practical governmental function to correct palpable abuses and unmistakable evils, but when you enter upon a field of legislative effort directed to the object of correcting the conditions under which the commerce of this country shall exist, you will find yourself in a region of speculation where the haze is thick and the shadows are abundant.

There is a rule of the U. S. Patent Office that no patent shall be granted to any man for the discovery of any principle or force in nature. It seems to be founded on the idea that no special appropriation should be made of a gift of God to the whole world. And I believe, sir, that it is not only against public policy but that certain

failure awaits any attempt to put any governing condition in the affairs of men into legislative harness. Conditions must govern laws, not laws govern conditions. Whenever you shall administer the American railroad system you will in an important degree administer the commercial and industrial interests which constitute its governing conditions. But that can never be in this land of liberty. Besides endowing the Commission with the functions of establishing through routes and through rates would manifestly be an attempt to force railroad companies into contractural relations of partnership, the impolicy and impractibility of which, in a legal and constitutional sense, is, I think, too clearly manifest to render necessary any further remark upon this subject.

Senator HIGGINS. What does the Commission mean by establishing through routes and through rates?

Mr. NIMMO. They mean the power to compel this road and the next road which connects with it to engage in joint traffic of every description, while the first road may have connecting lines in its own interest competing with the other.

The force of self-interest and the commercial necessities of the country have brought about a wonderful evolution in that respect. I have been watching this process for the last twenty-five or thirty years. To-day we have, practically, one instrument of commerce, one system—the American railroad system. It has developed so admirably that I think any interference with it would be oppressive and suicidal.

THE PROPOSITION TO PLACE AGREEMENTS AS TO THE DIVISION OF COMPETITIVE TRAFFIC IN THE ABSOLUTE CONTROL OF THE INTERSTATE COMMERCE COMMISSION.

There is a proposition to place agreements as to the division of competitive traffic in the absolute control of the Interstate Commerce Commission. I refer to the provisions of section 2 of H. R. 5665, beginning at line 19 of page 3. Such contracts are to become valid only upon the consent of the Commission, and that body is to be empowered to suspend or set aside such compacts at its discretion. This proposition also appears to me to be a paternalism of the most objectionable character. Besides, it involves the solecism of an attempt to place a restraint upon a restraint.

Mr. Chairman, I would never, as an officer of the Government, have given my indorsement to agreements as to the division of competitive traffic, nor would I do so now, except for the reason that I believe such agreements to be essentially wholesome and necessary restraints upon disorder and unjust practices in the conduct of the railroad transportation interests of the United States. It is an indisputable historic fact that such restraints were adopted and are submitted to by the railroad companies from enlightened views as to what is necessary and proper in order to prevent disorder, injustice, and insupportable evil

to themselves and to the commercial, industrial, and transportation interests of this great country.

They fought against it for twenty-five years. A few of them have not quite got through fighting it yet, but every one of them knows that it is a restraint, and the reason they try to break these arrangements is because it is a restraint against dishonest and unjust practices.

Why, then, seek to curtail the beneficent possibilities of a proven remedy and treat it as a possible evil? I believe that the fifth section of the act to regulate commerce, which prohibits such agreements, was an error based upon a misapprehension as to the intent and practical workings of agreements as to the division of traffic. In forbidding such agreements the Government has put itself in the position of giving loose rein to a great variety of unjust and demoralizing practices which the best railroad men in this country had for years been trying to abolish. Therefore, I maintain that section 5 of the act to regulate commerce ought to be at once and unconditionally repealed. It is gratifying to know that the gentleman who was mainly instrumental in securing the adoption of that section as a part of the law, Mr. Reagan, of Texas, has been brought to see the error which he then made.

Just here some one may ask, Do you, then, propose to set up such agreements independent of the law? I answer no—most emphatically no. Section 6 of the present law clearly brings such agreements under the supervision of the Interstate Commerce Commission in the provision that every railroad company shall file with the Commission "copies of all contracts, agreements, or arrangements with other common carriers." Besides, the ample powers of the Commission to suppress extortion and unjust discrimination fully cover such agreements and go to the utmost limit of the beneficent possibilities of governmental regulation. Yes, sir; I not only want agreements as to the division of traffic to be subject to full governmental supervision, but I want them to have the most perfect publicity and the most absolute legality. I think the bill which I drew, Senate bill 1039, meets these requirements fully. But I see no particular objection to Senate bill 1534, known as the Gorman bill. At the present time I do not care to discuss the detail of any bill. It is for vitally important commercial and political principles that I am contending.

The idea of prohibiting the railroads of this country from entering into contracts for the maintenance of order and the prevention of unjust discrimination, except upon the consent of the Interstate Commerce Commission, is, I repeat, a paternalism of the most pronounced type. I denounce it, as I denounce every attempt to devolve upon the National Government the administration of the commercial and transportation interests of this great country, and thus to overwhelm the Government with responsibilities which, under our form of Government, should attach only to freemen engaged in the competitive strug-

gles of life. One honest and determined effort at self-control is worth an hundred efforts at Governmental control.

I can not believe that the Senate of the United States will ever commit itself, even incidentally or constructively, to any such political heresies as those to which I have alluded.

Mr. Chairman, these requests of the Interstate Commerce Commission that they may be strengthened, appear to me to be emanations of the present tendency in Governmental affairs toward paternalism. It is the fad of the present day. It seems to be in the air. The gamut of this strain is sounded in these three tones—paternalism, populism, Governmental imperialism.

But I am satisfied that when this sort of political music shall break upon the ear of the American people with any force, it will be smothered by that stalwart love of liberty which in the beginning exalted individualism above Governmental imperialism, and which I believe will for all time constitute the most striking characteristic of our national life. I conceive it to be a patriotic duty to challenge this tendency toward paternalism at the very threshold.

THE PROPOSITION TO GRANT TO THE INTERSTATE COMMERCE COMMISSION JUDICIAL POWERS.

There is one other way in which the Commission seems to think it ought to be strengthened and that is by granting to it judicial powers. This appeal is embodied in a bill now before Congress. About two years ago a similar proposition was considered by this committee. It so clashed with my cherished political principles and with all that I had learned in regard to the proprieties of Governmental administration that I was impelled to oppose it. As I had the last word in that argument, and no heed was paid to the request of the Commission, I am inclined to think it may be unbecoming in me to say very much upon the subject just now.

But as the Commission in its last annual report has renewed its recommendation as to this method of adding to its powers, I can not allow the subject to pass unnoticed. The Commission has completely reversed its position upon this subject during the last three years. On page 106 of its Third Annual Report we find the following:

> There is also in the public mind a sense of incongruity between the prosecuting function, involving as it does detective methods and an attitude of hostility, and the judicial function rightly expected to require impartial and just investigation and decision of controverted questions of law and fact. It is a fundamental principle, and generally provided for by statutes, that every man shall have a fair trial before a tribunal free from any possible bias that might arise from relationship, interest in the result, or partisan connection as attorney or counsel, or who may become a prosecutor in the transaction.

This is true to the fundamental principles upon which our Govern-

ment was founded, and it is strictly in accord with the views of Alexander Hamilton as expressed in The Federalist, No. LXXVIII, as follows:

> The Executive not only dispenses the honors, but holds the sword of the community. The Legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse, no *direction either of the strength or the wealth of the society, and can take no active resolution.* It can be truly said to have neither *force* nor *will*, but merely judgment, and must ultimately depend upon the aid of the executive arm for the efficacious exercise of even this faculty.

And further on Hamilton, quoting from another, said:

> I agree that there is no liberty if the power of judging be not separated from the legislative and executive powers.

In his Commentaries on the Constitution, Judge Story has quoted and incorporated into the text of his work the above-mentioned words of Hamilton as expressive of his own views upon the subject—a work dedicated to the greatest of American jurists, John Marshall, chief justice of the United States, who had assisted in framing and in supporting the Constitution.

Mr. Chairman, there is a view of this question which I can not fail to bring to your notice. It is a matter of current history which can not have escaped you that the Federal judiciary regards as extremely distasteful all attempts on the part of the Interstate Commerce Commission to assume judicial functions. The administration of justice in this country is an exclusive power. In the language of a great American jurist, "it tolerates no brother near the throne." It would be uncharitable and unjust to accuse the judiciary of hostility to the Interstate Commerce Commission, and yet we all know that it is impossible to eliminate the personal equation from the practical exercise of power. A rooted political prejudice, especially when it relates to a matter involving self-defense, must, and inevitably will, assert itself. It is, of course, unnecessary for me to say a word in this connection as to the importance of avoiding governmental antagonisms, especially when we remember that the United States is the only great nation on the globe whose judicial system is a coordinate branch of the Government with the Executive and legislative.

Mr. Chairman, I sincerely hope it will not be assumed that I oppose any measure which you may have under consideration for the purpose of enabling the Commission to secure evidence in cases of unjust discrimination. That is completely outside of my argument. Nor do I oppose any other expedient for aiding the Commission in the discharge of its functions not subject to the objections which I have raised.

The incongruity of functions to which the Commission referred in its third annual report has suggested the idea of regulation involving the Commission in its present form and a special judicial tribunal corresponding somewhat with the admiralty court in marine cases.

expressed myself favorably to that plan two years ago to Senator Cullom, but upon reflection it appears to me it will be wise to defer the matter for a few years.

The last annual report of the Commission confirms me in this view. Just consider once more what the Commission reported last December—the public mind enlightened, the views of railroad managers reformed, carriers and the people coming to understand and concede their respective rights and needs, the work of regulation continually progressing in the hands of the Commission and in the State and Federal courts, not a single proven case of unreasonable rates during the year, and only 16 cases heard and determined by the Commission in the entire United States of America with the doors of the Commission wide open to complaints. The beneficent law of the American railroad system did the rest. Let well enough alone. In the name of peace and good government let well enough alone.

And now, Mr. Chairman, by way of recapitulation, I submit to you the following points:

(1) Everyone of these requests of the Interstate Commerce Commission for an enlargement of its powers is completely outside of the scheme of regulation prescribed by the act to regulate commerce and recommended in Senator Cullom's splendid report which rendered the passage of that act possible.

(2) The attempt of the Commission to devolve upon the Government responsibility for the conduct of the internal commerce of this country, by granting to the Commission administrative authority in the management of the railroads, would be a mischievous and dangerous assumption of governmental powers.

(3) The proposed attempt of the Commission to usurp a portion of the clearly defined powers of the judicial branch of this Government would be revolutionary.

Mr. Chairman, I have attempted to prove to you, historically and descriptively, that we have in this country one great American Railroad System—a vast organism, self-governed and sharply conditioned by its environment. I have also attempted to prove to you that the developed law of this great system of transportation dictates the just and beneficent limitations of governmental regulation, and that the proposed attempts to govern the railroads outside of such limitations are repressive of the freedom of commerce, un-American, un-Jeffersonian, and, in the most offensive sense of the term, paternalistic. Sir, the day for empirical railroad legislation in this country is past. The path of the legislator is to-day clearly illuminated by the lamp of experience.

There are two ways of viewing the railroad problem, from the standpoint of achievements and from the standpoint of evils and frictional resistances. The evils and abuses which have arisen in the course of the evolution of the American railroad system are clearly defined and unmistakable, but they are as dust in the balance in proportion to the

benefits which have been and are to-day realized from railroad transportation. The fact that the official function of the Interstate Commerce Commission relates exclusively to evils and abuses has, I fear, led them into the error of devising a scheme of regulation based solely upon assumed specific remedies, and of ignoring the fact that there is an American railroad system whose developed law prescribes the limitations of all just and beneficent governmental regulations.

The Commission bases its various pleas in favor of strengthening its authority mainly upon the fact that it encounters difficulties which it can not completely compass with its present powers. But, sir, I maintain that this does not furnish even prima facie evidence that the granting of the additional powers asked for would be justifiable or even politic, especially in view of the splendid successes which the Commission has achieved in the exercise of its proper function of preventing unjust discrimination and unreasonable charges. Sir, I was long enough an officer of the National Government to learn that the possibilities of the beneficial exercise of governmental power do not run along the line of the personal ambition or the personal comfort of any officeholder, be he tidewaiter, or secretary, or commissioner, or President. The genius of our Government is ever and anon inculcating the unwelcome lesson that in the administration of governmental powers there is strength in weakness and weakness in strength; and I thank God it is so, for it is of the very essence of liberty regulated by law.

Senator HIGGINS. What is the difference between the power to prevent unreasonable rates under the present law and the power to fix rates? As a matter of fact, is it a difference in character or only in degree from the power to fix rates?

Mr. NIMMO. I think it differs just as clearly as a case in court differs from the power to compel the formation of a contract.

Senator HIGGINS. You understand the view suggested by the Commission in its report. I am not familiar with it, but Judge Knapp in his remarks the other day suggested that the proposition to fix rates is nothing more than the power to prevent exorbitant rates on the one hand or too low rates on the other.

Mr. NIMMO. The distinction between this and the power to prevent an unreasonable or an exorbitant rate is the same as that between punishing men for doing wrong and attempting to show them how to go aright. It is such paternalism that I oppose. When we lose sight of the distinction between doing justice and administering the transportation interests of this country we drift at once into the vagaries of paternalism.

Senator HIGGINS. The Commission now has the power to determine whether a rate is reasonable or unreasonable, but not to establish or determine *ab initio* what the rate shall be.

Mr. NIMMO. Yes, sir; the Commission has that power now.

Senator HIGGINS. You approve that?

Mr. NIMMO. Yes, sir; I think the present act is admirable, and that its administration has been successful.

Senator GORMAN. In all except the fifth section?

Mr. NIMMO. Yes, sir; in all except the fifth section.

Senator HIGGINS. You think the act really gives the Commission the power to prevent injustice in rates, and that the Commission has already what Judge Knapp claims it ought to have.

Mr. NIMMO. Yes, sir; I think it is rather idealistic to have a law which shall cure all evils in advance. But look at the Commission. Look at their work and their reports. I have been reading their reports and watching their progress with a great deal of interest ever since they began, and I think under this law they have made a decided success. There is no court in the United States that has so few cases appealed from it, and they have had hundreds of cases to consider. That struck me. When I read their report I went down and congratulated Judge Veazey upon the success of the Commission. I also congratulated Senator Cullom. I asked Commissioner Veazey how many cases there had been before the Commission. He said several hundred cases during the year, and that they were all settled in an amicable way by pointing out the wrong, and that in 19 cases out of 20 the correction was made without any formal hearing or trial of the case.

Senator CHANDLER. Let me ask you if it is your idea that it would be suicidal paternalism to allow the Interstate Commerce Commission to fix reasonable rates in the beginning.

Mr. NIMMO. Yes, sir; I think it would.

Senator CHANDLER. But you think it is entirely a legitimate governmental interference to allow them to reduce, if they can, exorbitant rates after they are once fixed?

Mr. NIMMO. Yes, sir; upon a complaint and hearing of a case.

Mr. KNAPP. Mr. Chairman, may I be permitted to occupy your time for one moment? If the Commission had ever asked or recommended, or if anyone of its members now desired or had indicated the slighest disposition to desire anything whatever of the sort imputed to us by Mr. Nimmo, I should think his condemnation extremely appropriate; but nothing is further from the fact as I understand, and I am surprised that any such impression should exist as to the purposes sought to be accomplished by such amended bill as the Commission have approved.

Senator CHANDLER. What do you think the Commission should have to do with rates?

Mr. KNAPP. I have never suggested anything more than that where a given rate is distinctly challenged by formal complaint on the ground that it is either in itself excessive, that is to say, exorbitant, or that it is relatively unjust as between different communities, and the question is investigated, all the facts bearing upon it are exhibited and a deter-

mination is reached that it should be in the nature of an expression of the will of Congress concerning the disputed proposition, and any review by the courts should be limited to the record made before the Commissioners. I have never suggested anything more, and I confess I am astonished when it is said that some representatives of the railroads assume that the Commission desire to make rates, as though we proposed to become a legislative body, depriving the railroads of their present rate-making powers, and sitting there in our office and by edicts and decrees promulgating to the country the standard of compensation, and requiring compliance with that standard by all the railroad companies in the country. I am astonished that they should impute any such desire or purpose to our recommendations.

I have never suggested anything more than when a distinct charge is made that a certain rate discriminates against a locality or is unjust to the shipper that we should be practically a tribunal of first instance in the determination of the question.

Let me ask Mr. Nimmo a question. I assume he must concede that we have absolutely no power and can not be given any power with reference to those offenses which are made misdemeanors under the statute.

Mr. NIMMO. You are going into a class of questions with which I have not dealt.

Mr. KNAPP. We have no power and can not have any power concerning those offenses which are made misdemeanors by the statute. So the only function which we can exercise and the only one with which Congress can clothe the Commission is with relation to discriminations which are not misdemeanors, not criminal in their character, but are between different communities or different commodities; in other words, that sort of injustice which may result from the strictest observance of the published rates.

Mr. NIMMO. I think on the first 10 pages of the report of the Commission it is clearly stated that the Commission asked for permission to revise and supervise the freight tariffs before they are published.

Senator CHANDLER. Do you refer to the last annual report, the report for 1893?

Mr. NIMMO. Yes, sir.

Mr. KNAPP. Will you not call my attention to any such language?

Mr. NIMMO. Certainly.

Mr. Nimmo subsequently submitted the following statement:

In the course of my argument I stated that "the Commission seek the power of rate making, at least to the extent of supervising and changing all rate sheets according to their own ideas as to what is just and reasonable. This is clearly stated in their last annual report. Such an attempt at rate making would, in my belief, constitute a paternalism of the most objectionable character and throw upon the Gov-

ernment an intolerable burden. I can hardly conceive of a graver political error."

To this Mr. Commissioner Knapp objected, declaring that the Commission does not aim to secure the power of rate-making.

It appears to me that the following extract from pages 10 and 11 of the last annual report of the Commission fully sustain my charge as above quoted, and I accordingly submit it as my reply to Commissioner Knapp's objections:

"When the duty of Government regulation was undertaken by the enactment of the act to regulate commerce there were tariffs in general use which furnished, nominally at least, the basis for computing the carrier's charges. These standards of compensation are devised by the railroads themselves and represent their notions of proper remuneration, save as they have been corrected to some extent through the agency of this Commission. The great body of producers and consumers whose interests are so vitally affected by the cost of transportation, and who are so completely dependent upon this necessary service, have no voice *in fixing the scale of charges* and little power to prevent exactions or inequality, except as they may command the intervention of Federal authority. That this authority *should be exercised for the relief and protection of the public* no longer admits of discussion.

"There is a growing conviction of national duty in this regard, and the notion that the strong arm of Government should hold the balance of power between the carriers and the people has taken a firm hold upon public opinion. *To investigate these tariffs*, established as they are by the railroads themselves and in their own interests, to require their correction when ascertained to be unfair or oppressive, to determine *what are just and reasonable rates for public carriage*, is a governmental function of the highest utility. This is the central idea of regulation and the special field of its usefulness. Transportation is a constant and universal necessity. The State is bound to see that the terms upon which it is furnished are not burdensome or unequal.

"It requires little consideration of the difficulties which these observations suggest to be impressed with *the necessity for Government control over the rates and charges of railway carriers.* Some authority there must be, superior to and independent of the railroads themselves, *to supervise their tariffs*, prevent unfair exactions, and equalize, so far as may be, the burdens of transportation. More and more as population increases and industries multiply will these burdens require careful scrutiny and equitable readjustment. To give each community the rightful benefits of location, to keep different commodities on an equal footing, so that each shall circulate freely and in natural volume, and to prescribe schedule rates which shall be reasonably just to both shipper and carrier is a task of vast magnitude and importance. In the performance of that task lies the great and permanent work of public regulation. It is the manifest duty of Congress, therefore, to invest this Commission, or such other agency as may be wisely employed, with ample authority to correct ascertained excesses and enforce the observance of relative justice. Its power should be proportioned to the requirements of effective administration, so that through its instrumentality the obligations of the Government in regard to public transportation may be properly discharged. Thus endowed, the labors of the Commission will conserve the true interests of railway carriers and promote in a high degree the public welfare."

I also beg leave in this connection to submit the following extract from the testimony of Mr. Commissioner Knapp before this committee on the 27th of March—a week ago to-day:

"The other day I was asked by the chairman whether I thought the Commission should fix rates and I said 'Yes.' That was the only categorical answer I could make to the question. He said, 'Absolutely and arbitrarily?' I said, 'Yes, in substance.' I do not mean capriciously; I do not mean by any fiat or edict. I do not mean it in that sense at all. Congress has the power to say how much shall be charged on cotton from New Orleans to New York, or what the rate shall be on dressed beef or grain from the West to the seaboard; but Congress can not sit here and fix rates by direct legislation. It would be impolitic, it would be arbitrary, it would involve partisan politics and a thousand and one considerations which preclude the propriety of such an attempt. Since that can not be done, how is it to be done? Are the railroads alone to say how much they shall charge? Is there to be no authority to limit the amount of compensation which a public carrier may receive?"

I submit that the above extract from the seventh annual report of the Commission and from Commissioner Knapp's testimony fully sustains my charge that the Commission aims to secure the power of rate-making in the manner and to the extent stated in my argument.

JOSEHH NIMMO, JR.

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